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Appl. No. 10/810,002
Amdt. A dated February 7, 2007
Resp. to O.A. dated November 8, 2006

PATENT
Docket No. J-3949

Remarks

Applicants wish to thank Examiner Jacyna for courtesies extended during a telephonic interview on October 20, 2006, wherein David J. Houser, Esq. provisionally made an election with traverse to prosecute the invention of group 2, claims 1, 2, 4, 7-16, 18-26, 28, 29, 36-39, 41, and 42. Applicants hereby affirm the election and withdraw claims 3, 5, 6, 17, 27, 30-35, and 40 from further consideration pending the filing of one or more continuing applications. Accordingly, claims 1, 2, 4, 7-16, 18-26, 28, 29, 36-39, 41, and 42 are pending and at issue in this application.

Applicants respectfully traverse the rejection of claims 1, 2, 4, 7, 11-16, 18-21, 24, 25, 28, 29, 36-38, 41, and 42 as anticipated by WO 03/103760. Further, applicants traverse the rejection of claims 19-21, 28, and 19 as anticipated by Ostrowsky. In addition, applicants traverse the rejection of claims 8-10, 22, 23, 26, and 39 as obvious over WO 03/103760. Still further, applicants traverse the rejection of claims 22 and 23 as obvious over Ostrowsky.

Claim 1, and claims 2, 4, 7-16, and 18 dependent thereon recite a combination having a product container having a longitudinal dimension and a valve oriented to discharge product generally longitudinally therefrom. A valve actuating apparatus extends laterally from the valve in a direction transverse to the longitudinal dimension and terminating at an outer peripheral surface. A housing has a wall that tapers to a discharge opening. The discharge opening has a size larger than a radius of the container but smaller than the greatest lateral extent of the valve actuating apparatus such that the outer peripheral surface is disposed in interfering relationship with the wall when the container is disposed in the housing.

Amended claim 19, and claims 20-26, 28, and 29 dependent thereon specify an actuator cap including a main wall that extends generally along an axial dimension thereof and has a varying cross-sectional size. An actuator member extends transversely to the axial dimension and ends in an outer peripheral surface wherein the outer peripheral surface extends laterally beyond a portion of the main wall but does not extend beyond a greatest lateral extent of main wall. An upright portion that has a curved outer surface is disposed adjacent the actuator member.

Claim 36, and claims 37-39, and 41 dependent thereon recite a method of dispensing, the method includes the step of selecting a container of product having a longitudinal

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dimension and a valve actuatable to dispense product generally parallel to the longitudinal dimension. The valve actuating apparatus extends from the valve in a direction transverse to the longitudinal dimension of the container and terminates at an outer peripheral surface. The method further includes the steps of selecting a housing having a wall that reduces in cross sectional size to a discharge opening. The discharge opening has a size that is larger than a radius of the container and small enough so that the wall provides an interfering relationship with the outer peripheral surface. Furthermore, the method includes the steps of placing the container into the housing and providing a relative movement of the container and the housing in a direction along the longitudinal dimension such that the outer peripheral surface contacts a surface of the wall, thereby displacing the valve actuating apparatus to dispense product from the housing.

Claim 42 recites a method of providing apparatus to an end user wherein the method includes the step of providing a container of product having a longitudinal dimension. A valve actuating apparatus extends in a direction transverse to the longitudinal dimension and terminates at an outer peripheral surface. The method further includes the steps of causing the container to be delivered to the end user and identifying the container and the valve actuating apparatus as suitable for placement within a housing that has a wall that tapers to a discharge opening. The discharge opening has a size that is larger than a radius of the container but small enough to provide an interfering relationship between the wall and the valve actuating apparatus such that the product can be dispensed by moving the container and the housing relative to each other in a direction along the longitudinal dimension to displace the valve actuating apparatus against a surface of the wall.

None of the applied art discloses or suggest a combination or method including a product container, a valve actuating apparatus, and a housing that has a wall that tapers to a discharge opening wherein the discharge opening has a size that is larger than a radius of the container but smaller than the greatest lateral extent of the valve actuating apparatus as specified by claims 1, 2, 4, 7-16, 18, 36-39, 41, and 42. Further, none of the applied art shows or teaches an actuator cap that has an upright portion having a curved outer surface disposed adjacent the actuator member as recited in claims 19-26, 28, and 29.

In fact, WO 03/103760 discloses a medication inhaler device having a generally elongate pen shaped body housing. The housing has a delivery end 60 at a first end of a

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forward portion 21 that holds a nozzle assembly, a central portion 22 that acts as a casing for a medication canister 30, and a housing 23 for a cocking mechanism to actuate the medication canister 30. The housing 23 is screwed to the top of central portion 22, and the forward portion 21 is screwed to the bottom of central portion 22. The nozzle assembly includes a delivery nozzle 50, a nozzle support, an actuator 54, a pawl 55, and a canister support 56. The canister 30 contains medication that can be dispensed through a metered dose valve and an outlet tube 32 attached therethrough. A free end of the outlet tube 32 is inserted into the delivery nozzle 50. When medication is not being dispensed from the device, the canister leading edge rests against the canister support, which bears on one of two legs of the pawl 55. The two legs of pawl 55 rest on a step in a slot in the nozzle support 52. To dispense a dose of medication, a user depresses the actuator 54 protruding through forward portion 21 and a lever 40 of the cocking mechanism is rotated through approximately 90 degrees to apply pressure to the canister 30 inside the central portion 22. Depression of the actuator 54 allows the pawl 55 to slide in the direction of delivery end 60 of the inhaler by deflecting the legs of the pawl 55 away from the step within the nozzle assembly. The pressure applied by the lever 40 causes the canister 30 to move laterally toward the delivery end 60 and relative to the outlet tube 32 thereby causing the medication to be discharged into the nozzle when the pawl interferes with another step within the nozzle assembly.

Ostrowsky discloses a safety actuator means including a cap and a toggle-type actuator that are integrally molded by injection molding. The cap has a hollow body with an annular bottom portion that is adapted to seat on the annular rim of an aerosol container. The exterior surface of the body has two opposite sides which are recessed inwardly from an arcuate circumference. The two opposite sides are substantially parallel to each other and have slight inward slope from the bottom portion to the top of the cap. A tab of the toggle-type actuator projects through each rectangular-shaped opening that is disposed on both sides of the cap body. A front end of the cap body is adapted receive a spout end of a discharge nozzle which is operatively connected to the toggle-type actuator. A button-type digital depressible member is operatively connected to the toggle-type actuator and protrudes through an opening on the top surface of the cap body. Both tabs of the toggle-type activator and the button-type digital depressible member must be depressed to discharge the contents of the aerosol container. The Ostrowsky specification states that: "Not until there is a three

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point pressure applied to the toggle-type actuator will the aerosol valve stem 22 operate to an open position. This makes it virtually impossible for a child to operate the aerosol unit and provides the safety factor." (Col. 4, lines 51-55).

WO 03/103760 does not show a container housing that has a discharge opening with a cross sectional area that is larger than a radius of the container. A discharge opening configured in this fashion considerably reduces the potential for contact between a valve nozzle and the housing, thereby minimizing the risk of impinging or obstructing product flow to the exterior of the housing when the valve is activated. This feature is particularly advantageous for products that fan out while discharging from the container. In such cases, the large surface area of the discharge opening further minimizes deposition of product residue on the interior surface of the housing. Also, the applied reference does not show an elongate opening on the elongate pen shaped housing or a section that allows for viewing of the container in the housing. This feature is advantageous because it allows a user to know exactly what product is being sprayed without having to remove the product container from the housing. In addition, the actuator 54 of the inhaler device of WO 03/103760 protrudes through the wall of forward portion 21.

Because the applied references do not disclose or suggest each of the elements recited by the claims at issue, it follows that such claims are not anticipated thereby. Further, the subject matter recited in the claims is not rendered obvious by either Ostrowsky or WO 03/103760, nor a combination thereof, because the applied art does not even suggest an incentive for the claimed subject matter.

Further, because the dependent claims at issue incorporate the subject matter of the respective independent claims, it follows that the dependent claims are also allowable for the reasons presented above.

For the foregoing reasons, reconsideration and withdrawal of the rejections of the claims and allowance thereof are respectfully requested.

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Deposit Account Authorization

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The Commissioner is hereby authorized to charge any deficiency in any amount enclosed or any additional fees which may be required during the pendency of this application under 37 CFR 1.16 or 1.17, except issue fees, to Deposit Account No. 50-1903.

Respectfully submitted,

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